

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|---------------------------------------|---|----------------------------|
| In re Application of | : | Customer Number: 31824 |
| | : | |
| Christopher Robert BEBBINGTON, et al. | : | Confirmation Number: 9929 |
| | : | |
| Serial No.: 10/585,149 | : | Group Art Unit: |
| | : | |
| Filed: June 30, 2006 | : | Examiner: Not Yet Assigned |
| | : | |

For: TRANSACTIVATION SYSTEM FOR MAMMALIAN CELLS

PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the NOTIFICATION OF ABANDONMENT dated February 20, 2009, Applicants hereby request that the NOTIFICATION OF ABANDONMENT be withdrawn and that prosecution for the application be reopened. (*See* Manual of Patent Examination Procedure § 711.04(c) (2007).) Petitioner respectfully submits that this NOTIFICATION OF ABANDONMENT appears to have been issued in error because the Notification of Missing Requirements upon which it is based was VACATED ten weeks before the date of this NOTIFICATION OF ABANDONMENT, February 20, 2009. In the alternative, Petitioner requests that the NOTIFICATION OF ABANDONMENT be withdrawn because Applicant did not receive the March 27, 2007, Notification of Missing Requirements.

Statement of Facts

On December 8, 2008, the Patent Office issued a Decision granting Petitioner's previous Petition for Withdrawal of Abandonment. (Exhibit 1.) The Patent Office held that Petitioner had demonstrated nonreceipt of the Notification of Missing Requirements dated March 26, 2007, and so vacated the Notification of Abandonment. (*Id.*) By this Decision, the Patent Office also VACATED the March 26, 2007, Notification of Missing Requirements. (*Id.*)

On January 22, 2009, Examiner Kidwell issued a second NOTIFICATION OF ABANDONMENT in this application, based upon the now vacated March 26, 2007, Notification of Missing Requirements. Applicant first learned of this second NOTIFICATION OF ABANDONMENT upon a check of Private Pair for the above referenced application on February 2, 2009. Applicant had a telephonic interview with Examiner Kidwell regarding the second NOTIFICATION OF ABANDONMENT on February 3, 2009, in which Examiner Kidwell acknowledged that the NOTIFICATION OF ABANDONMENT was issued in error. Applicants filed a Petition to Withdraw this second NOTIFICATION OF ABANDONMENT on February 10, 2009.

The present NOTIFICATION OF ABANDONMENT dated February 20, 2009 (Exhibit 2), is the third Applicants has received based on the March 26, 2007, Notification of Missing Requirements. Applicant first learned of this third NOTIFICATION OF ABANDONMENT upon a check of Private Pair for the above referenced application during the week of February 23, 2009. As noted above, the Notification of Missing Requirements that is the basis for the third NOTIFICATION OF ABANDONMENT was vacated by a Patent Office Decision dated December 8, 2008. Applicant had a telephonic interview with Examiner Kidwell regarding the present NOTIFICATION OF ABANDONMENT on during the week of February 23, 2009, in which

Examiner Kidwell acknowledged that this third NOTIFICATION OF ABANDONMENT was also issued in error.

Petition for Withdrawal of Holding of Abandonment

Petitioner respectfully requests that the February 22, 2009, NOTIFICATION OF ABANDONMENT be withdrawn because it appears to have been issued in error since the December 8, 2008, Decision by the Patent Office vacated the Notification of Missing Requirements dated March 26, 2007. (Exhibit 1.)

In the alternative, Petitioner requests that the February 22, 2009, NOTIFICATION OF ABANDONMENT be withdrawn based on the nonreceipt of the march 26, 2007, Notification of Missing Requirements by the Applicant, as detailed in the Petition to Withdraw Abandonment already of record in this case (and which is incorporated by reference into this Petition to Withdraw Abandonment).

Conclusion

Petitioner submits that the Notification of Missing Requirements was vacated by the Patent Office in December 2008, and so, cannot form the basis of the February 20, 2009, NOTIFICATION OF ABANDONMENT. Also, Petitioner resubmits that Applicants did not receive the Notification of Missing Requirements, and as such, the Petitioner respectfully request that the NOTIFICATION OF ABANDONMENT be withdrawn for this reason as well.

The Commissioner is hereby authorized to charge Deposit Account No. 502203 the amount necessary to cover any fee in connection with this filing and the associated Petition.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

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Date: March 6, 2009

**Please recognize our Customer No. 31824
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MPK 151184-1.073678.0026

EXHIBIT

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08 DEC 2008

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18191 VON KARMAN AVE.
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IRVINE CA 92612-7108

In re Application of :
BEBBINGTON et al. :
Application No.: 10/585,149 : DECISION
PCT No.: PCT/US2004/043830 :
Int. Filing Date: 30 December 2004 :
Priority Date: 31 December 2003 :
Attorney's Docket No.: 073678-0026 :
For: TRANSACTIVATION SYSTEM FOR :
MAMMALIAN CELLS :

This decision is in response to applicants' "REQUEST FOR RECONSIDERATION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", "RENEWAL OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", which was accompanied by, *inter alia*, a master docket report showing all docketed due dates for all USPTO replies received at the correspondence address during the time period March 26, 2007 to June 26, 2007, "Renewal of Petition to Revive for Unavoidable Abandonment", and "Petition to Revive for Unintentional Abandonment", all filed 18 September 2008.

BACKGROUND

On 30 December 2004, applicants filed international application PCT/US2004/04380, which designated the United States and claimed a priority date of 31 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2006.

On 30 June 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 26 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905).

On 27 March 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to timely respond to the Notification mailed 26 March 2007.

On 17 April 2008, applicants submitted a "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT."

On 25 August 2008, applicants submitted a "SUPPLEMENTAL FILING IN SUPPORT OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT," which was accompanied by, *inter alia*, an incoming mail log for the law firm of petitioner.

On 02 September 2008, a decision was mailed properly treating the submissions filed 17 April 2008 and 25 August 2008 as a single petition under 37 CFR 1.181 and a request, in the alternative, that the petition be considered a petition to revive under 37 CFR 1.137(a). The petition under 37 CFR 1.181 was dismissed without prejudice for failing to provide a proper docket report. The petition under 37 CFR 1.137(a) was also dismissed without prejudice.

On 18 September 2008, applicants filed the instant submission.

DISCUSSION

Petition Under 37 CFR 1.181

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As noted in the decision mailed 02 September 2008, items (1) and (2) have been met.

Item (3) has now been met as well. The copy of the docket record mentioned above is sufficient.

Petition Under 37 CFR 1.137(a)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(a) is moot.

Petition Under 37 CFR 1.137(b)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(b) is moot.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 26 March 2007 is **VACATED**.

For the reasons set forth above, the NOTIFICATION OF ABANDONMENT mailed 27 March 2008 is **VACATED**.

For the reasons set forth above, the petition under 37 CFR 1.137(a) is **DISMISSED** as **MOOT**.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is **DISMISSED** as **MOOT**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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EXHIBIT

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www.uspto.gov

| U.S. APPLICATION NUMBER NO. | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
|-----------------------------|-------------------------------|------------------|
| 10/585,149 | Christopher Robert Bebbington | 073678-0026 |

31824
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| INTERNATIONAL APPLICATION NO. | |
|-------------------------------|---------------|
| PCT/US04/43830 | |
| I.A. FILING DATE | PRIORITY DATE |
| 12/30/2004 | 12/31/2003 |

CONFIRMATION NO. 9929

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ABANDONMENT/TERMINATION
LETTER



OC000000029083105

Date Mailed: 02/20/2009

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 03/26/2007 within the time period set therein.

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

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